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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

No. 539..

THE PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* FRANK PARKER,  
*Petitioner,*  
*vs.*

THOMAS J. O'BRIEN, Sheriff of Cook County,  
*Respondent.*

**PETITION FOR A WRIT OF CERTIORARI TO THE  
 SUPREME COURT OF ILLINOIS AND  
 BRIEF IN SUPPORT THEREOF.**

WM. SCOTT STEWART,  
*Counsel for Petitioner.*

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## PETITION FOR WRIT OF CERTIORARI

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MAY IT PLEASE THE COURT:

The petition of Frank Parker, a citizen of the United States, brings this action in the name of the People of the State of Illinois, seeking review of the denial of rights claimed to be federal by the highest court in the State.

### **Summary Statement of the Matter Involved**

Your petitioner was indicted charged with the crime of conspiracy in the Criminal Court of Cook County, Illinois. While on bail awaiting trial in the State Court he was indicted in the Federal Court in Chicago, Illinois, on another charge. Here he again gave bail. He was tried first in the Federal Court and when judgment was there entered he was denied bail and placed in the County jail. The United States Marshal permitted your petitioner to remain in the custody of the Sheriff in order that he might be tried in the State Court. Thereafter the State Court, with knowledge of the previous Federal sentence, entered judgment, including a one-year jail sentence. The judgment in the State Court, as well as the Federal judgment, is silent as to any other judgment. Your petitioner contends that under the law as established in both jurisdictions the State judgment ran concurrently with the Federal sentence. Your petitioner was placed in the custody of the Sheriff by order of the State Court with the consent of the Federal authorities and your petitioner commenced the service of his State Court sentence. Then without any order of any court, and without the consent of your petitioner, the Sheriff turned your petitioner over to the United States Marshal, who delivered your petitioner to the Federal Penitentiary, where your petitioner served for nineteen months. During the time that your petitioner was imprisoned in the Federal Penitentiary, a hold-order, warrant or mittimus was lodged with the Warden, and when your petitioner was released by the federal authorities at the expiration of his federal sentence, your petitioner was turned over to the Cook County Sheriff, who has lodged your petitioner in jail claiming that your petitioner must continue to serve out the one year sen-

tence which was so interrupted and which sentence has long since expired. A fine which was made part of the State court sentence has been secured by judgment, and the Sheriff has no right and does not claim to hold your petitioner for the fine. As a matter of fact, the Sheriff makes no other claim to the custody of your petitioner other than for what the prosecutor claims to be the balance of the year not yet served, and which term your petitioner claims to have been served.

The facts were presented to the Supreme Court of Illinois in a petition for the writ of habeas corpus, which petition was denied. The State Supreme Court refused to issue the writ and thereby denied your petitioner a hearing. The denial of relief was made when petitioner filed his petition without requiring the appearance of respondent or of any state officials. Your petitioner claimed in his petition to the State Court (R. p. 4 on p. 8; R. p. 7 on p. 6), among other things, that he has been and is being deprived of due process of law as guaranteed by the fourteenth amendment to the Federal constitution.

#### **Specification of Errors to Be Urged**

The Supreme Court of Illinois erred in not issuing the writ of habeas corpus and denying a hearing to petitioner. Due process of law as established in Illinois and guaranteed to petitioner under the fourteenth amendment to the constitution of the United States requires that he be discharged, his sentence having expired.

#### **Basis of the Court's Jurisdiction**

This Honorable Court may by certiorari have this cause certified to it for determination under the act of February 13, 1925, 43 Stat. 936, 937, Ch. 229, amending and re-

enacting Sec. 240 (a) of the Judicial Code, 28 U. S. C. A., Secs. 344, 347. Section 262 of the Judicial Code (28 U. S. C. A. 377) contemplates the employment of this writ in instances not covered by section 240 as a means of giving full force and effect to existing appellate authority and of furthering justice in other kindred ways (*In re 620 Church St. Corp.*, 299 U. S. 24, 26). The final decision in the Supreme Court of Illinois denying relief was rendered November 11, 1942.

### **Questions Presented**

Is the Sheriff holding your petitioner in jail after the expiration of his sentence, and, if so, does such illegal detention deprive petitioner of one of the fundamental rights guaranteed by the due process clause of the fourteenth amendment?

### **Reasons for Granting the Writ**

Although requested in a proper proceeding, the highest court of the State has denied a fundamental right guaranteed by the Federal constitution.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Illinois, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 27021, The People of the State of Illinois, *ex rel.* Frank Parker *vs.* Thomas J. O'Brien, Sheriff of Cook County, (a transcript of which record is submitted herewith), and that the said judgment of the Supreme Court of Illinois may be reversed by this

Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

FRANK PARKER,

*Petitioner,*

By Wm. SCOTT STEWART,

*Counsel for Petitioner.*